

House Bill 811 (AS PASSED HOUSE AND SENATE)

By: Representative Jenkins of the 8th

A BILL TO BE ENTITLED
AN ACT

To create the Union County Building Authority; to provide for a short title and legislative findings; to confer powers and impose duties on the authority; to provide for the membership and the appointment of members of the authority and their terms of office, qualifications, duties, powers, and compensation; to provide for vacancies, organization, meetings, and expenses; to provide for definitions; to provide for revenue bonds and their negotiability, sale, and use of proceeds from such sales; to provide for condition for issuance; to prohibit the pledge of credit for the payment of bonds; to provide for trust indentures and sinking fund; to provide for payment of bond proceeds; to provide for bondholder remedies and protection; to provide for refunding bonds; to provide for bond validation; to provide for venue and jurisdiction; to provide for trust funds; to provide for authority purpose; to provide for charges; to provide for rules and regulations; to provide for tort immunity; to provide for tax exemptions and exemptions from levy and sale; to provide for supplemental powers; to provide for effect on other governments; to provide for liberal construction; to provide for severability and an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Short title.

This Act may be cited as the "Union County Building Authority Act."

SECTION 2.

Union County Building Authority created.

There is hereby created a body corporate and politic to be known as the Union County Building Authority (herein called the "authority"), which shall be deemed to be a public corporation by that name, style, and title to be known. Such corporation shall be separate and

1 distinct from any public corporation heretofore created by the General Assembly and shall
2 be an instrumentality of the State of Georgia exercising governmental powers. All property
3 owned by such corporation shall be public property held and owned for governmental
4 purposes and shall be exempt from taxation.

5 **SECTION 3.**

6 General powers.

7 The authority shall have the power:

8 (1) To hold, own, and convey real and personal property;

9 (2) To sue and be sued;

10 (3) To have and to use a seal and to alter the same at pleasure;

11 (4) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell
12 any project as hereinafter defined;

13 (5) To exercise the powers conferred upon a "public corporation" or a "public authority"
14 by Article IX, Section III, Paragraph I of the Constitution of Georgia, such authority
15 being hereby expressly declared to be a "public corporation" or a "public authority"
16 within the meaning of such provision of the Constitution of Georgia;

17 (6) To acquire in its own name by purchase on such terms and conditions and in such
18 manner as it may deem proper. If the authority shall deem it expedient to construct any
19 project on lands which are subject to the control of Union County, Georgia, Union
20 County, Georgia, is authorized to convey such lands to the authority for such
21 consideration as may be agreed upon by the authority and Union County, Georgia, taking
22 into consideration the public benefit to be derived from such conveyance;

23 (7) To accept gifts and bequests for its corporate purposes;

24 (8) To appoint, select, and employ officers, agents, and employees, including
25 engineering, architectural, and construction experts, fiscal agents, and attorneys, and to
26 fix their compensation;

27 (9) To make and execute with public and private persons and corporations contracts,
28 lease agreements, rental agreements, installment sale agreements, and other instruments
29 relating to its projects and incident to the exercise of the powers of the authority,
30 including contracts for constructing, renting, leasing, and selling its projects for the
31 benefit of Union County, Georgia; and, without limiting the generality of the foregoing,
32 authority is specifically granted to Union County, Georgia, to enter into contracts, lease
33 agreements, rental agreements, installment sale agreements, and related agreements with
34 the authority for a term not exceeding 50 years;

(10) To sell or assign its rights under its contracts, lease agreements, or installment sale agreements or its right to receive payments thereunder, either directly or through trust or custodial arrangements whereby interests are created in such contracts, lease agreements, or installment sale agreements or the payments to be received thereunder through the issuance of trust certificates, certificates of participation, custodial receipts, or other similar instruments;

(11) To accept loans and grants of money or property of any kind from the United States, the State of Georgia, or any political subdivision of the State of Georgia;

(12) To borrow money for any of its corporate purposes and to issue revenue bonds payable solely from funds or revenues of the authority pledged for that purpose and to pledge and assign any of its revenues, income, rent, charges, and fees to provide for the payment of the same and to provide for the rights of the holders of such revenue bonds; and

(13) To make such rules and regulations governing its employees and property as it may in its discretion deem proper.

SECTION 4.

Membership.

The authority shall consist of five members who shall be residents of Union County, Georgia, who shall be eligible to succeed themselves, and who shall be appointed by the commissioner of Union County, Georgia. The commissioner shall not be eligible to be appointed to or serve on the authority. The members of the authority shall hold office for terms of four years and until their successors shall be appointed; provided, however, that of the original members appointed to the authority, three shall be appointed for terms of one year each and two shall be appointed for terms of three years. Upon the expiration of each of such initial terms, the successors shall be appointed for terms of four years. Any vacancy on the authority shall be filled for the unexpired term by the commissioner. Immediately after their appointment, the members of the authority shall enter upon their duties. Three members of the authority shall constitute a quorum, and no vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority and, in every instance, a majority vote of a quorum shall authorize any legal act of the authority, including all things necessary to authorize and issue revenue bonds. The authority shall elect one of its members as chairperson and shall elect a secretary and treasurer who need not necessarily be a member of the authority. The members of the authority shall not be entitled to compensation for their services but shall be entitled to and shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The authority shall make rules and regulations

1 for its own government. It shall have perpetual existence. Any change in name or
2 composition of the authority shall in no way affect the vested rights of any person under the
3 provisions of this Act or impair the obligations of any contracts existing under this Act.

4 **SECTION 5.**

5 Definitions.

6 As used in this Act, the following words and terms shall have the following meanings unless
7 a different meaning clearly appears from the context:

8 (1) "Authority" shall mean the Union County Building Authority created in Section 2 of
9 this Act.

10 (2) "Project" shall mean and include real and personal property, including buildings and
11 related facilities and equipment, which are necessary or convenient for the efficient
12 operation of Union County, Georgia.

13 (3) "Cost of the project" shall include the cost of construction, the cost of all lands,
14 properties, rights, easements, and franchises acquired, the cost of buildings,
15 improvements, materials, labor, and services contracted for, the cost of all machinery and
16 equipment, financing charges, interest prior to and during construction and for one year
17 after the completion of construction, engineering, architectural, fiscal, accounting,
18 inspection, and legal expenses, cost of plans and specifications, and other expenses
19 necessary or incident to determining the feasibility or practicability of the project,
20 administrative expenses, and such other expenses as may be necessary or incident to the
21 financing herein authorized, the acquisition, construction, renovation, reconstruction, or
22 remodeling of any project, the placing of the same in operation, and the condemnation
23 of property necessary for such construction and operation. Any obligation or expense
24 incurred for any of the foregoing purposes shall be regarded as a part of the cost of the
25 project and may be paid or reimbursed as such out of any funds of the authority,
26 including proceeds of any revenue bonds issued under the provisions of this Act for any
27 such project or projects and the proceeds of the sale of any contracts, lease agreements,
28 or installment sale agreements or the amounts payable thereunder, either directly or by
29 the creation of interests therein.

30 (4) "Revenue bonds" shall mean revenue bonds issued by the authority pursuant to the
31 terms of this Act and Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the
32 "Revenue Bond Law."

33 (5) Any project shall be deemed "self-liquidating" if, in the judgment of the authority,
34 the revenues and earnings to be derived by the authority therefrom and all properties
35 used, leased, and sold in connection therewith will be sufficient to pay the cost of

operating, maintaining, and repairing the project and to pay the principal of and interest on the revenue bonds which may be issued to finance, in whole or in part, the cost of such project or projects.

SECTION 6.

Revenue bonds.

The authority shall have power and is hereby authorized from time to time to provide by resolution for the issuance of negotiable revenue bonds in the manner provided by Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," for the purpose of paying all or any part of the cost of any one or more projects, including the cost of constructing, reconstructing, equipping, extending, adding to, or improving any such project, or for the purpose of refunding, as herein provided, any such bonds of the authority previously issued. The principal of and interest on such revenue bonds shall be payable solely from such part of the revenues and earnings of such project or projects as may be designated in the resolution of the authority authorizing the issuance of such revenue bonds. The revenue bonds of each issue shall be issued and validated under and in accordance with the provisions of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law."

SECTION 7.

Revenue bonds; negotiability and exemption from taxation.

All revenue bonds issued under the provisions of this Act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of this state. Such bonds are declared to be issued for an essential public and governmental purpose and such bonds and the income thereof shall be exempt from all taxation within this state.

SECTION 8.

Credit not pledged.

Revenue bonds issued under the provisions of this Act shall not constitute a debt or a pledge of the faith and credit of the State of Georgia or of Union County, Georgia, but such bonds shall be payable solely from such part of the revenues and earnings of such project or projects as may be designated in the resolution of the authority authorizing the issuance of such bonds. The issuance of such revenue bonds shall not directly, indirectly, or contingently

1 obligate the State of Georgia or Union County, Georgia, to levy or to pledge any form of
2 taxation whatever for the payment thereof. No holder of any bond or receiver or trustee in
3 connection therewith shall have the right to enforce the payment thereof against any property
4 of the State of Georgia or Union County, Georgia, nor shall any such bond constitute a
5 charge, lien, or encumbrance, legal or equitable, upon any such property. All such bonds
6 shall contain on their face a recital setting forth substantially the foregoing provisions of this
7 section. Union County, Georgia, however, may obligate itself to pay the amounts required
8 under any contract entered into with the authority from funds received from taxes to be
9 levied and collected for that purpose to the extent necessary to pay the obligations
10 contractually incurred with the authority, and from any other source; and the obligation to
11 make such payments shall constitute a general obligation and a pledge of the full faith and
12 credit of Union County, Georgia, but shall not constitute a debt of Union County, Georgia,
13 within the meaning of the Constitution of the State of Georgia, Article IX, Section V,
14 Paragraph I; and, when Union County, Georgia, contracts with the authority to make such
15 payments from taxes to be levied for that purpose, then the obligation shall be mandatory to
16 levy and collect such taxes from year to year in an amount sufficient to fulfill and fully
17 comply with the terms of such contract.

18 **SECTION 9.**

19 Revenue bonds; trust indenture as security.

20 In the discretion of the authority, any issue of such revenue bonds may be secured by a trust
21 indenture by and between the authority and a corporate trustee, which may be any trust
22 company or bank having the powers of a trust company within or outside of the State of
23 Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and earnings
24 to be received by the authority, including the proceeds derived from the sale or lease, from
25 time to time, of any project. Either the resolution providing for the issuance of revenue bonds
26 or such trust indenture may contain such provisions for protecting and enforcing the rights
27 and remedies of the bondholders as may be reasonable and proper and not in violation of law,
28 including covenants setting forth the duties of the authority in relation to the acquisition and
29 construction of any project, the maintenance, operation, repair, and insurance of any project,
30 and the custody, safeguarding and application of all moneys, including the proceeds derived
31 from the sale or lease of any project, and may also provide that any project shall be acquired
32 and constructed under the supervision and approval of consulting engineers or architects
33 employed or designated by the authority and satisfactory to the original purchasers of the
34 bonds issued therefor, and may also require that the security given by contractors and by any
35 depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such

1 purchasers, and may also contain provisions concerning the conditions, if any, upon which
2 additional revenue bonds pledging all or any part of the revenues and earnings of such
3 project or projects may be issued. Such indenture may set forth the rights and remedies of
4 the bondholders and of the trustee. In addition to the foregoing, such trust indenture may
5 contain such other provisions as the authority may deem reasonable and proper for the
6 security of the bondholders. All expenses incurred in carrying out such trust indenture may
7 be treated as a part of the cost of maintenance, operation, and repair of the project affected
8 by such indenture.

9 **SECTION 10.**

10 Revenue bonds; sinking fund.

11 The revenues, fees, tolls, and earnings derived from any particular project or projects,
12 regardless of whether or not such revenues, fees, tolls, and earnings were produced by a
13 particular project for which bonds have been issued, and any moneys derived from the sale
14 of any properties, both real and personal, of the authority, unless otherwise pledged and
15 allocated, may be pledged and allocated by the authority to the payment of the principal and
16 interest on revenue bonds of the authority as the resolution authorizing the issuance of the
17 bonds or the trust indenture may provide, and such funds so pledged, from whatever source
18 received, which such pledge may include funds received from one or more or all sources not
19 previously pledged and allocated, shall be set aside at regular intervals, as may be provided
20 in the resolution or trust indenture, into a sinking fund, which such sinking fund shall be
21 pledged to and charged with the payments of:

22 (1) The interest upon such revenue bonds as such interest shall fall due;

23 (2) The principal of the bonds as the same shall fall due;

24 (3) The necessary charges of any paying agent or agents for paying principal and
25 interest; and

26 (4) Any premium upon bonds retired by call or purchase.

27 The use and disposition of such sinking fund shall be subject to such regulations as may be
28 provided in the resolution authorizing the issuance of the revenue bonds or in the trust
29 indenture, but, except as may otherwise be provided in such resolution or trust indenture,
30 such sinking fund shall be a fund for the benefit of all revenue bonds issued pursuant to such
31 resolution or trust indenture without distinction or priority of one over another.

SECTION 11.

Revenue bonds; refunding bonds.

The authority is hereby authorized to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under the provisions of this Act and then outstanding, together with accrued interest thereon and any premium required for the payment of such bonds prior to maturity. The issuance of such revenue bonds and all the details thereof, the rights of the holders thereof, and the duties of the authority with respect to the same shall be governed by the foregoing provisions of this Act insofar as the same may be applicable.

SECTION 12.

Venue; jurisdiction; service.

The principal office of the authority shall be in Union County, Georgia, and the venue of any action against it shall be in Union County. Any action pertaining to the validation of any bonds issued under the provisions of this Act and for the validation of any contract entered into by the authority shall be brought in the Superior Court of Union County, and such court shall have exclusive original jurisdiction of such actions. Service upon the authority of any process, subpoena, or summons shall be effected by serving the same personally upon any member of the authority.

SECTION 13.

Revenue bonds; validation.

Revenue bonds of the authority shall be confirmed and validated in accordance with the procedure now or hereafter set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," as the same now exists or may hereafter be amended. The petition for validation shall also make a party defendant to such action Union County, Georgia, if such county has or will contract with the authority with respect to the project for which bonds are to be issued and are sought to be validated, and Union County, Georgia, shall be required to show cause, if any exists, why such contract and the terms and conditions thereof should not be inquired into by the court and the validity of the terms thereof be determined and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds, when validated, and the judgment of validation shall be final and conclusive with respect to the validity of such bonds against the authority, and the validity of the contract and of the terms and conditions thereof, when validated, and the judgment of

validation shall be final and conclusive against Union County, Georgia, if it be a party to the validation proceeding as herein provided for.

SECTION 14.

Interest of bondholders and holders of interests
in authority contracts protected.

While any of the bonds issued by the authority or any interests in contracts of the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interest and rights of the holders of such bonds or such interests in contracts of the authority. The provisions of this section of this Act shall be for the benefit of the authority and of the holders of any such bonds and interests in contracts of the authority and, upon the issuance of bonds or the creation of interests in contracts of the authority under the provisions of this Act, shall constitute a contract with the holders of such bonds or such interests in contracts of the authority.

SECTION 15.

Moneys received considered trust funds.

All moneys received by the authority pursuant to this Act, whether as proceeds from the sale of revenue bonds or contracts of the authority, as grants or other contributions, or as revenues, income, fees, and earnings, shall be deemed to be the trust funds to be held and applied solely as provided in this Act and in such resolutions and trust indentures as may be adopted and entered into by the authority pursuant to this Act.

SECTION 16.

Rates, charges, and revenues of projects.

The authority is hereby authorized to prescribe and fix and collect rates, fees, tolls, rents, and charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and charges for the services, facilities, or commodities furnished, including leases, concessions, or subleases of its projects, and to determine the price and terms at and under which its projects may be sold.

SECTION 17.

Exemption from taxation.

The exercise of the powers conferred upon the authority hereunder shall constitute an essential governmental function for a public purpose and the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation and maintenance of property acquired by it or of buildings erected or acquired by it or any fees, rentals, or other charges for the use of such property or buildings or other income received by the authority.

The tax exemption herein provided shall not include an exemption from sales and use tax on property purchased by or for the use of the authority.

SECTION 18.

Immunity from tort actions.

The authority shall have the same immunity and exemption from liability for torts and negligence as the State of Georgia, and the officers, agents, and employees of the authority, when in performance of work of the authority, shall have the same immunity and exemption from liability for torts and negligence as officers, agents, and employees of the State of Georgia. The authority may be sued the same as any private corporations on any contractual obligation of the authority.

SECTION 19.

Property not subject to levy and sale.

The property of the authority shall not be subject to levy and sale under legal process.

SECTION 20.

Scope of operations.

The scope of the authority's operation shall be limited to the territory embraced within the territorial limits of Union County, as the same now or may hereafter exist.

SECTION 21.

Powers declared supplemental and additional.

This Act does not in any way take away from the authority any power which may be conferred upon it by law but is supplemental thereto.

SECTION 22.

Authority without taxing power.

The authority shall not have the right to impose any tax on any person or property.

SECTION 23.

Liberal construction of Act.

This Act shall be liberally construed to effect the purposes hereof.

SECTION 24.

Effect of partial invalidity of Act.

Should any sentence, clause, phrase, or part of this Act be declared for any reason to be unconstitutional or invalid, the same shall not affect the remainder of this Act or any part hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall remain in full force and effect, and it is the express intention of this Act to enact each provision of this Act independently of any other provision hereof.

SECTION 25.

Effective date.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 26.

Repeal.

All laws and parts of laws in conflict herewith are hereby repealed.